

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 23004 of 2001(L)

PETITIONER:

**G.RAMACHANDRAN, ADMINISTRATIVE ASSISTANT,
DIRECTORATE OF ANIMAL HUSBANDRY,
VIKAS BHAVAN, THIRUVANANTHAPURAM
RESIDING AT 'AKSHARAM', T.C. NO.28/133,
KAITHAMUKKU, THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
SRI.GOVINDKUMAR MENON**

RESPONDENTS:

- 1. THE COMMISSIONER & SECRETARY (FINANCE),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE SECRETARY TO GOVERNMENT, AGRICULTURE,
(AHE) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 3. THE ACCOUNTANT GENERAL (A&E) KERALA,
KALOOR BRANCH, ERNAKULAM.**

BY GOVERNMENT PLEADER SRI.MOHAMMED FAZIL .M.P.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP. NO.37704/2001 IN OP. NO.23004/2001

DISMISSED

09.07.2007

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PORTION OF THE GOVERNMENT ORDER G.O.(P) NO.600/93/FIN DT. 25.9.93.

EXT.P2:- COPY OF THE RELEVANT PORTION OF THE G.O.(P) NO.930/93 (2)/ FIN DT. 8.12.1993.

EXT.P3:- COPY OF THE REPRESENTATION DT. 18.12.2000 SUBMITTED BY THE PETITIONER.

EXT.P4:- COPY OF THE LETTER NO.42288/AHE-2/2000/AD DT. 14.6.01 OF THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE GOVERNMENT ORDER G.O.(P) NO.81/94(5)/FIN DT. 2.2.94.

/TRUE COPY/

tss

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.23004 of 2001-L

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Dated this the 10th day of July, 2007.

JUDGMENT

By the impugned Ext.P4 issued making reference to clause 6 of Ext.P5 Government Order, the Department has refused to count the personal pay of the petitioner for notional fixation of pay. Rule 28A in Part I Kerala Service Rules provides that the fixation of the initial pay in the higher time-scale of pay shall be at the stage next above the pay notionally arrived at in the lower time-scale of pay by increasing the actual pay, drawn in the lower time-scale by one increment. Therefore, the increase has to be made by applying one increment on the actual pay drawn by him. "Pay" in terms of Rule 12(23) in Part I KSR includes "personal pay" as defined in Clause (26) of Rule 12, thereby meaning such additional pay granted to an officer for the

reasons enumerated in Clauses (a) and (b) thereof. Under such circumstances, notwithstanding Clause (6) in Ext.P5, which is an executive order, the statutory rules will prevail and the petitioner is entitled to the reliefs sought for. The question, if at all whether Ext.P5 applies to the petitioner or relates only to those governed by Central scale rates, as contended by the petitioner, is left open.

In the result, this writ petition is allowed quashing Ext.P4 and declaring that the personal pay granted to the petitioner for protection in the drop of increment on the revised scale is to be taken into account for notional fixation of pay in the cadre of Senior Superintendent under Rule 28A of Part I KSR. It is directed that his pay shall be re-fixed and this declaration given effect to by releasing all arrears, as may be found due, in accordance with law within a period of three months from the date of receipt of a copy of this judgment. Since the petitioner has retired from service, his retiral benefits will also be re-fixed and any

OP23004/2001

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outstanding arrears will be released within three months from the date of receipt of a copy of this judgment.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-

OP23004/2001

-: 4 :-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 23004 of 2001-L

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JUDGMENT

Dated: 10th July, 2007.